

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 54981-2
Respondent,	)	
	)	
v.	)	DIVISION ONE
	)	
ANRIO DEMETREOUD ADAMS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 3, 2006

**PER CURIAM** – Anrio Adams seeks to vacate the exceptional sentence imposed on him, claiming that the trial court abused its discretion by refusing to independently determine the appropriateness of the sentence agreed upon by Adams and the State. The record herein makes clear, however, that the trial court did make the necessary independent determination and properly exercised its discretion in imposing the exceptional sentence. Accordingly, we affirm.

### **FACTS**

Adams was charged with one count of first degree robbery while armed with a deadly weapon, a knife. The case was tried to a jury but the jury was unable to reach a unanimous verdict. The trial court declared a mistrial.

Adams and the State subsequently entered into a plea agreement. Adams agreed to plead guilty to the amended charge of first degree theft. The

parties jointly agreed to recommend an exceptional sentence of 120 months of confinement, the statutory maximum term. Adams stipulated that the facts set forth in the certification for determination of probable cause and the statement of defendant on plea of guilty were real and material facts for purposes of sentencing.

Specifically, in the statement of defendant on plea of guilty, Adams stated:

On or about September 23, 2003, in King County, Washington, I wrongfully obtained property belonging to Ali Mohammed that was not a firearm by taking it from his person with the intent to deprive him of it. In committing this offense, my accomplice and I threatened Ali Mohammed with a weapon and assaulted him by punching and kicking him. My accomplice and I took a wristwatch, a wallet and a taxicab from the victim.

I agree that the facts of this case justify imposition of an exceptional sentence because they make this Theft in the First Degree more egregious than the typical offense of this type and thus constitute a substantial and compelling reason to deviate from a standard range sentence. An exceptional sentence is justified because my conduct during the commission of this offense manifested deliberate cruelty to the victim and because the standard range would result in a presumptive sentence that is too lenient given my prior criminal history, the fact that I was on probation when I committed this crime, and the number of my unscored misdemeanor convictions. I knowingly, intelligently, and voluntarily waive my rights pursuant to *Blakely v. Washington*, U.S. S.Ct. No. 02-1632 (June 24, 2004), to have a jury determine whether an exceptional sentence should be imposed in this case and agree that the judge may impose an exceptional sentence of ten (10) years, the maximum term allowed under the law.

I am entering this agreement to avoid the possibility that, after a retrial, I might be convicted of Robbery in the First Degree and sentenced as a persistent offender to a term of life without the possibility of parole.

During the guilty plea colloquy, the trial court informed Adams that the

applicable standard range sentence was 43 to 57 months of confinement, with a maximum sentence of 120 months of confinement. The parties agreed to make a joint recommendation of an exceptional sentence of 120 months in custody. The trial court also informed Adams that it was not required to follow the parties' sentencing agreement recommendation:

THE COURT: All right. And let me ask you this. You understand that even though your attorney and the state's attorney are both making a joint recommendation for the statutory maximum of 10 years, you understand I am not bound to that. I don't have to do that?

ADAMS: Yes.

The court determined that Adams' guilty plea was made knowingly, voluntarily, and intelligently.

Prior to sentencing, Adams moved to withdraw his guilty plea, claiming that he had not understood that his attorney would be bound to recommend a 120-month sentence rather than a standard-range sentence. After a hearing, the trial court denied the motion. The court determined that "[t]here couldn't be a clearer record that Mr. Adams was well aware of what he was entering into, which was an agreed exceptional [sentence]."

During sentencing, the trial court stated that "it is this court's duty, frankly, to follow that [agreed-upon exceptional sentence] contract, whether – regardless of what I personally believe." However, the court also entered findings of fact and conclusions of law supporting the imposition of the exceptional sentence. The court concluded:

The agreed sentencing recommendation is just, it is proportionate to what similar offenders facing similar charges would receive under similar circumstances, it will protect the public by ensuring incarceration for ten years, it will provide the defendant with an opportunity to improve himself before and after release, and it will make frugal use of prosecutorial, judicial, and Department of Corrections resources. The sentence is consistent with the interests of justice and with the prosecuting standards.

The trial court sentenced Adams to an exceptional sentence of 120 months of confinement.

Adams appeals.

### **DISCUSSION**

On appeal, Adams does not challenge the validity of his guilty plea nor does he seek to withdraw the plea. Instead, Adams argues that the exceptional sentence imposed on him should be vacated because the trial court erroneously found that it had a duty to impose the parties' agreed-upon sentence, thus failing to independently determine whether the sentence was legally appropriate. We disagree.

There is a strong public interest in enforcing the terms of plea agreements which are voluntarily and intelligently made. State v. Perkins, 108 Wn.2d 212, 216, 737 P.2d 250 (1987). As between the parties, plea agreements are regarded and interpreted as contracts. Thus, both parties are bound by the terms of a valid plea agreement. State v. Talley, 134 Wn.2d 176, 182, 949 P.2d 358 (1998).

However, the trial court is not bound to accept an agreement negotiated by the State and a defendant unless it first determines that the agreement is consistent with the interests of justice, as set forth in the Sentencing Reform Act of 1981 (SRA). RCW 9.94A.431(1). Furthermore, the court is not bound to follow any sentencing recommendation contained in such an agreement. RCW 9.94A.431(2).

Instead, the court must independently determine that the sentence imposed is appropriate. In re Pers. Restraint of Breedlove, 138 Wn.2d 298, 309, 979 P.2d 417 (1999). When imposing an exceptional sentence, the trial court must determine that the defendant entered the plea agreement knowingly, intelligently, and voluntarily. State v. Gronnert, 122 Wn. App. 214, 220, 93 P.3d 200 (2004). The court must then find that the plea agreement itself is “a substantial and compelling reason for imposing an exceptional sentence.” In re Breedlove, 138 Wn.2d at 309.

Here, the trial court spoke inartfully when it stated that “it is this court’s duty, frankly, to follow that [agreed-upon exceptional sentence] contract, whether – regardless of what I personally believe.” But it is clear, based on the record, both that the trial court knew of its responsibility to make an independent determination, and that such a determination was made.

First, the court correctly informed Adams that it was not required to follow the recommendations of the parties. Second, in its findings of fact and

conclusions of law the court determined that, after having reviewed all the evidence, the plea agreement of the parties, and the arguments of counsel, an exceptional sentence of 120 months was justified. Third, the court noted that Adams entered the plea agreement knowingly, intelligently, and voluntarily. And fourth, Adams' statement of defendant on plea of guilty clearly evinced his admission of facts warranting an exceptional sentence. For the reasons stated above, we find that the trial court properly imposed the exceptional sentence.

Finally, Adams contends that the trial court erred by entering finding of fact 6, which states:

The defendant stipulated to real facts. The facts surrounding the theft in the first degree establish that the victim suffered multiple wounds that the defendant and his accomplice inflicted. The defendant agrees that if he were re-tried on the original charge of Robbery in the First Degree there is a serious possibility that he would be convicted. Thus, the plea agreement limited the defendant's exposure to a higher sentence, and simultaneously assured the State a conviction and sentence that served the interests of justice and the purposes of the SRA.

Adams argues that this finding was not supported by substantial evidence in the record. However, the finding that the victim suffered multiple wounds is supported by information in the certification for determination of probable cause. The trial court was authorized to consider the certification for purposes of sentencing Adams and properly entered finding of fact 6. State v. Halstien, 122 Wn.2d 109, 128, 857 P.2d 270 (1993).

Affirmed.

FOR THE COURT:

Denz, J.

Column, J

Edenfor, J